

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHUBB & SON INC., et al.,

Plaintiffs,

92 CV 4484 (TLM)(RML)

- against -

MICHAEL J. KELLEHER, et al.,

Defendants.

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CHUBB & SON INC., et al.,

Plaintiffs,

95 CV 0951 (CBA)(RML)

- against -

JAMES KELLEHER, et al.,

PARTIAL JUDGMENT
NOT FOR PUBLICATION

Defendants.

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AMON, Chief United States District Judge:

On March 7, 2011, this Court adopted a Report and Recommendation (R&R) of the Honorable Robert M. Levy, dated October 22, 2010, recommending that plaintiffs' motion for partial summary judgment against defendant Elliot Zerring be granted and that plaintiffs be awarded treble damages of \$22,145,806.65, minus set-offs for prior recoveries, plus pre-judgment interest at a rate of nine percent per annum on the common law fraud damages. The Court directed the plaintiffs to submit a damages calculation, which they did on March 28, 2011 (case no. 92-cv-4484, docket entry #1578). Defendant Zerring was provided with a copy of this calculation and has not objected.

Having reviewed these documents, the Court finds that the total amount of set-offs to the plaintiffs' claims against Zerring is \$5,731,060.51. This is slightly higher than the amount provided in plaintiffs' calculation (\$5,728,182.66), which contained a slight arithmetical error.

Based on the Court's own calculation, Nicholas Addesa was liable for a total of \$2,845,404.53 of Interstate's fraudulent claims (the Eastbank Corp., Foxx & DeLorenzo, Nicon Plastics, Techknits, Criterion Bead, and both Damast claims added together), thus making 28.14% (or \$36,550.89) of the recovery obtained from Addesa allocable to the Zerring judgment as a set-off. (See docket entry #1578, Ex. A.)

This total set-off amount is subtracted from the trebled damages, leaving a total damages recovery of \$16,414,746.14.

The Court has also reviewed the plaintiffs' calculation of pre-judgment interest on the common law fraud damages, and finds the amount of \$8,930,409.40 in interest accrued through March 28, 2011 to be accurate. The Court will also award additional pre-judgment interest accruing at a per diem rate of \$407.77 for each day after March 28, 2011 until the entry of judgment.

The Court will not, however, award the additional \$1,650,875.04 of unrecovered principal on the common law fraud damages (which remains after the prior recoveries have been subtracted). First, this amount was not included in the final calculation in the R&R that this Court adopted. See Chubb & Son Inc. v. Kelleher, 2010 WL 5978913, at *9 (E.D.N.Y. 2010). Second, the plaintiffs have already been compensated for the common law fraud through the treble damages awarded under the RICO statute, since the measure of damages for both the RICO and common law fraud claims was the total amount of settlements paid out on the fraudulent insurance claims. Id. at *6. To award this remaining principal on the common law fraud counts, in addition to the treble damages, would in effect amount to a quadruple recovery. See Nagoya Venture Ltd. v. Bacopoulos, 1999 WL 311918, at *3 (S.D.N.Y. 1999) ("Since the

common law damages compensate for the same loss as the RICO award . . . plaintiffs are not entitled to double recovery for the same loss.”)

The Court thus concludes that the plaintiffs are entitled to a judgment against Zerring for \$16,414,746.14 in damages, plus \$8,930,409.40 in pre-judgment interest accrued on the common law fraud damages through March 28, 2011, plus \$74,621.91 in additional interest accrued through September 27, 2011. **This equals a total damages judgment against Zerring of \$25,419,777.45.**

SO ORDERED.

Dated: Brooklyn, New York
September 27, 2011

/s/
Carol Bagley Amon
Chief United States District Judge